

ORDINANCE NO. 1778

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE BY REPEALING CHAPTER 2.34, "ADMINISTRATIVE PROCEDURES FOR ADMINISTRATIVE PROCEEDINGS," IN ITS ENTIRETY; REPEALING AND REENACTING SECTION 3.01.460, BUSINESS TAX CERTIFICATION – "ENFORCEMENT"; REPEALING AND REENACTING SECTION 10.56.020 (J), (K), AND (L)-(1), REMOVAL OF VEHICLES – "REMOVAL FROM PRIVATE PROPERTY"; AMENDING BUILDING CODE SECTION 15.04.060, "VIOLATION-MISDEMEANOR," BY ADDING SECTION (C); REPEALING AND REENACTING CHAPTER 15.24, "HOUSING CODE," SECTIONS 15.24.30 – 15.24.70 AND SECTIONS 15.24.090 – 15.24.100; REPEALING AND REENACTING SECTIONS 15.28.030, 15.28.070, 15.28.080, 15.28.090, 15.28.100, 15.28.120, AND 15.28.140 RELATING TO THE ABATEMENT OF DANGEROUS BUILDINGS CODE; REPEALING SECTIONS 15.30.040 – 15.30.220 AND REENACTING SECTIONS 15.30.040 – 15.30.060 RELATING TO PROPERTY MAINTENANCE AND THE DESIGNATION OF CERTAIN KINDS OF NUISANCES; AND AMENDING CHAPTER 15.31, "WEED AND REFUSE ABATEMENT," BY ADDING SECTIONS 15.31.150 – 15.31.170

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 2.34, "Administrative Procedures for Administrative Proceedings," is hereby repealed in its entirety.

Section 2. Lodi Municipal Code Section 3.01.460, "Enforcement," is hereby repealed and reenacted to read as follows:

- A. Duties of the Finance Director. It shall be the duty of the finance director to enforce each and all of the provisions of this chapter. *For purposes of such enforcement, the finance director and finance technicians (or equivalent position as it may be renamed from time to time) are "officers" who may issue citations to violators of this chapter pursuant to Chapter 1.10 of this code.*
- B. Inspections. The finance director, in the exercise of the duties *imposed by the provisions of this section*, and acting through deputies of duly authorized assistants, shall have the right to *enter and examine all places of business free of charge during normal business hours to ascertain whether the provisions of this chapter are being complied with.*
- C. Penalty for Violation. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 3. Lodi Municipal Code Section 10.56.020 (J), (K), and (L)-(1), "Removal from Private Property," is hereby repealed and reenacted to read as follows:

- J. Public Hearing. Upon request by the owner of the vehicle or owner of the land, received by the community development director *within ten days after the mailing of the notices of intention to abate and remove*, a public hearing shall be held in accordance with the provisions of Chapter 1.10 of this code on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled, or inoperative vehicle, and the assessment of the administrative costs and the cost of removal of the vehicle or parts thereof against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land within such ten-day period, said statement shall be construed as a request for a hearing, which does not require the owner's presence. Notice of the hearing shall be mailed, by registered mail, at least ten days before the hearing, to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within said ten days after mailing of the notice of intention to abate and remove, the city shall have the authority to abate and remove the vehicle or parts thereof as a public nuisance without holding a public hearing.

K. Public Hearing by Administrative Hearing Officer

1. All hearings under this chapter shall be held before the Administrative Hearing Officer in accordance with Section 1.10 of this Code, who shall hear all facts and testimony he/she deems pertinent. Such facts and testimony may include testimony on the condition of the vehicle or parts thereof and the circumstances concerning its location on the private property or public property. The Administrative Hearing Officer shall not be limited by the technical rules of evidence. The owner of the land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with reasons for such denial.
2. The Administrative Hearing Officer may impose such conditions and take such other action he/she deems appropriate under the circumstances to carry out the purpose of this chapter. The Administrative Hearing Officer may delay the time for removal of the vehicle or parts thereof if, in his/her opinion, the circumstances justify it. At the conclusion of the public hearing, the Administrative Hearing Officer may find that a vehicle or parts thereof has been abandoned, wrecked, dismantled, or is inoperative on private or public property and order the same removed from the property as a public nuisance and disposed of as hereinafter provided and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.
3. If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that the owner has not subsequently acquiesced in its presence, the Administrative Hearing Officer shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.
4. If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his/her land but does not appear, or if an interested party makes a written presentation to the Administrative Hearing Officer but does not appear, the owner or interested party shall be notified in writing of the decision.

L. Judicial Review.

1. Any interested party may appeal the decision of the Administrative Hearing Officer in accordance with the provisions of Chapter 1.10 of this Code.

Section 4. Lodi Municipal Code Section 15.04.060, "Violation-Misdemeanor," is hereby amended by adding Section (C) and shall read as follows:

- C. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 5. Lodi Municipal Code Chapter 15.24, "Housing Code," Sections 15.24.30 – 15.24.70 and Sections 15.24.90 – 15.24.100 are hereby repealed and reenacted to read as follows:

Section 15.24.030, "Section 401 amended – Definitions"

Section 401, Definitions, of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, is amended as follows:

A. Add to subparagraph "Board of Appeals" to read as follows:

Whenever in this Code reference is made to the "Board of Appeals," "Appeals Board," or "Housing Advisory Board," it shall mean the Administrative Hearing Officer.

B. Add subparagraph "Building Officials" to read as follows:

Whenever in this Code reference is made to the "Building Official," it shall mean the legally designated Chief Building Inspector or Community Improvement Manager of the City of Lodi or his authorized representative.

C. Change subparagraph "Health Officers" to read:

Whenever in this Code reference is made to the "City Health Officer" or "Health Officer," it shall mean the legally designated Director of the San Joaquin County Environmental Health Division or his authorized representative.

D. Add subparagraph "Fire Marshal" to read as follows:

- *Whenever in this Code reference is made to the "City Fire Marshal" or "Fire Marshal," it shall mean the Fire Marshal of the City of Lodi or his authorized representative.*

Section 15.24.040, "Sections 1201.1, 1201.2, and 1201.3 amended – Appeal to Administrative Hearing Officer"

Sections 1201.1, 1201.2, and 1201.3 of the Uniform Housing Code, 1994 Edition, adopted by Section 15.24.010, are amended to read as follows:

Section 1201. Appeal to Administrative Hearing Officer

Any person aggrieved by any order of the Building Official hereunder to repair, vacate and repair, or demolish any building or structure, or portion thereof, may appeal such order to the Administrative Hearing Officer. The appeal, which shall be in writing and which shall state the substance of the order appealed from, shall be submitted to the Administrative Hearing Officer within ten (10) days from the date of personal service or mailing of the order which is being appealed. The Administrative Hearing Officer shall set the matter for hearing. Notice of the date, hour, and place of hearing shall be posted and served at least ten (10) days before the date set for the hearing in the manner and upon the persons specified in Sections 1101.3, 1101.4, and 1101.5. The notice shall order all interested parties who desire to be heard to appeal and show cause, if any they have, why the building or structure, or portion thereof, involved in the proceedings should not be repaired, vacated and repaired, or demolished.

Section 15.24.050, "Section 1205 added – Administrative Hearing Officer hearing"

Section 1205 of the Uniform Housing Code, 1994 Edition, adopted by Section 15.24.010, is added to read as follows:

Hearing before Administrative Hearing Officer. At the time stated in the notice, the Administrative Hearing Officer shall hold a hearing and hear and consider any evidence offered by the Building Official, owner, occupant or person in charge and in control, mortgagee, or beneficiary under any deed of trust, lessee, or any other persons having any estate or interest in said building or structure, pertaining to the matters set forth in the Notice to Repair, Vacate and Repair or Demolish. Upon the conclusion of the hearing, the Administrative Hearing Officer shall render its decision.

Section 15.24.060, "Section 1206 added – Order of the Administrative Hearing Officer"

Section 1206 of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, is added to read as follows:

Order of the Administrative Hearing Officer. If, from a full and fair consideration of the evidence and testimony received at the hearing, the Administrative Hearing Officer shall determine that the building or structure, or any portion thereof, is unsafe and a public nuisance, then it shall overrule the appeal and issue an order certified by the City Clerk:

1. That the building or structure must be repaired, vacated and repaired, or demolished;
2. That the occupant, lessee, or other person in possession must vacate said building or structure, or that he may remain in possession while repairs are being made;
3. That any mortgagee, beneficiary under a deed of trust, or any other persons having an interest or estate in the said building or structures may, at his own risk, repair, vacate and repair, or demolish it.

The order shall (i) set forth the information required in Section 1101.2; (ii) contain a statement of the particulars that render the building or structure unsafe and a public nuisance; and (iii) contain a statement of the things required to be done. The order shall specify (i) the time within which the work required must be commenced, which shall be not less than ten days after the issuance of the order, and (ii) a reasonable time within which the work shall be completed.

Section 15.24.070, "Section 1207 added – Serving and Posting of Order of Administrative Hearing Officer"

Section 1207 of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, is added to read as follows:

Serving and Posting of Order of Administrative Hearing Officer. Copies of the order of the Administrative Hearing Officer shall be posted on the building or structure involved and served in the manner and upon the persons specified in Section 1101.3, 1101.4, and 1101.5.

Section 15.24.090, "Sections 1501.1 and 1501.2 amended – Sale, Repair, or Demolition"

Sections 1501.1 and 1501.2 of the Uniform Housing Code, 1997 Edition, adopted by Section 15.24.010, are amended to read as follows:

Section 1501. Sale, Repair or Demolition. Whenever an order to repair, vacate and repair, or demolish any building or structure, or any portion thereof, has not been complied with within the time set by the Building Official, or by the Administrative Hearing Officer, whether under appeal or not, the Administrative Hearing Officer shall have the power, in addition to any other remedy herein provided, to:

1. Cause the material of any such building or structure to be sold in any manner that the Administrative Hearing Officer may determine upon; provided, however, that any such sale shall be upon condition that the building or structure be forthwith demolished, the wreckage and debris thereof removed and the lot cleaned. The Administrative Hearing Officer may sell any such building singly or otherwise. Any surplus from the sale of any such building or structure, or group of buildings and structures, over and above the cost of demolition and of cleaning the site shall be retained to be distributed to the parties or persons lawfully entitled thereto.
2. Cause the building or structure to be repaired or demolished. The cost thereof shall be assessed against the property upon which the particular building or structure is located or the Repair and Demolition Fund. The repair of any building or structure, or sale of the materials thereof, shall be by a contract awarded following advertisement for bids, to the lowest and best bidder in the case of repair or demolition work and to the highest and best bidder in the case of the sale of material.

Arrangements, as prescribed by the Administrative Hearing Officer in this section, preparing for the repair, demolition, or sale of materials, of or from any structure discussed in this Code shall be the responsibility of the Building Official. However, no such arrangements nor other work to that end shall be initiated prior to specific instructions from the Administrative Hearing Officer indicating such action.

15.24.100, "Violations – Penalty"

- A. No person, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done, contrary to, or in violation of, any of the provisions of this housing code.
- B. Any person, firm or corporation violating any provision of this code shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.
- C. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 6. Lodi Municipal Code Chapter 15.28, "Dangerous Building Code," Sections 15.28.030, 15.28.070, 15.28.080, 15.28.090, 15.28.100, 15.28.120, and 15.28.140 are hereby repealed and reenacted to read as follows:

Section 15.28.030, "Section 303 added – Board of Appeals"

Section 303, Board of Appeals, is added to the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, as follows:

Whenever in this Code reference is made to the "Board of Appeals," it shall mean the Administrative Hearing Officer of the City of Lodi.

Section 15.28.070, "Section 501.1, 501.2, and 501.3 added – Appeal to Administrative Hearing Officer"

Section 501.1, 501.2, and 501.3 of the Uniform Code for the Abatement of Dangerous Buildings, 1994 Edition, adopted by Section 15.28.010, is added to read as follows:

Section 501 Appeal to Administrative Hearing Officer.

Any person aggrieved by any order of the Building Official hereunder to repair, vacate and repair, or demolish any building or structure, or portion thereof, may appeal such order to the Administrative Hearing Officer. The appeal which shall be in writing and which shall state the substance of the order appealed from, shall be submitted to the Administrative Hearing Officer within ten (10) days from the date of personal service or mailing of the order which is being appealed. The Administrative Hearing Officer shall set the matter for hearing. Notice of the date, hour, and place of the hearing shall be posted and served at least ten (10) days before the date set for the hearing in the manner and upon the person specified in Section 401.3, 401.4, and 401.5. The notice shall order all interested parties who desire to be heard to appear and show cause, if any they have, why the building or structure, or portion thereof, involved in the proceedings should not be repaired, vacated and repaired, or demolished.

Section 15.28.080, "Section 505 amended – Hearing Before Administrative Hearing Officer"

Section 505 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Hearing Before Administrative Hearing Officer. At the time stated in the notice, the Administrative Hearing Officer shall hold a hearing and hear and consider any evidence offered by the Building Official, owner, occupant or person in charge and control, mortgagee, or beneficiary under any deed of trust, lessee, or any other person having any estate or interest in said building or structure, pertaining to the matters set forth in the Notice to Repair, Vacate and Repair, or Demolish. Upon the conclusion of the hearing, the Administrative Hearing Officer shall render its decision.

Section 15.28.090, "Section 506 amended – Order of Administrative Hearing Officer"

Section 506 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Order of Administrative Hearing Officer. If, from a full and fair consideration of the evidence and testimony received at the hearing, the Administrative Hearing Officer shall determine that the building or structure, or any portion thereof, is unsafe and a public nuisance, then it shall overrule the appeal and issue an order certified by the City Clerk;

1. That the building or structure must be repaired, vacated and repaired, or demolished;
2. That the occupant, lessee, or other person in possession must vacate said building or structure, or that he may remain in possession while repairs are being made;
3. That any mortgagee, beneficiary under a deed of trust, or any other person having an interest or estate in said building or structure may, at his own risk, repair, vacate and repair, or demolish it.

The order shall (i) set forth the information required in Section 401.2 Item 1; (ii) contain a statement of the particulars that render the building or structure unsafe and a public nuisance; and (iii) contain a statement of the things required to be done. The order shall specify (i) the time within which the work required must be commenced, which shall be not less than ten days after the issuance of the order, and (ii) a reasonable time within which the work shall be completed.

Section 15.28.100, "Section 507 amended – Serving and Posting of Order of Administrative Hearing Officer"

Section 507 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Serving and Posting of Order of Administrative Hearing Officer. Copies of the order of the Administrative Hearing Officer shall be posted on the building or structure involved and served in the manner and upon the persons specified in Section 401.3, 401.4, and 401.5.

Section 15.28.120, "Section 80.1 amended – Sale, Repair, or Demolition"

Section 801.1 of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, adopted by Section 15.28.010, is amended to read as follows:

Section 801.1. Sale, Repair, or Demolition. Whenever an order to repair, vacate and repair, or demolish any building or structure, or any portion thereof, has not been complied with within the time set by the Building Official, or by the Administrative Hearing Officer, whether under appeal or not, the Administrative Hearing Officer shall have the power, in addition to any other remedy herein provided, to:

1. Cause the material of any such building or structure to be sold in any manner that the Administrative Hearing Officer may determine upon; provided, however, that any such sale shall be upon condition that the building or structure be forthwith demolished, the wreckage and debris thereof removed and the lot cleaned. The Administrative Hearing Officer may sell any such building singly or otherwise. Any surplus from the sale of any such building or structure, or group of buildings and structures, over and above the cost of demolition and of cleaning the site shall be retained to be distributed to the parties or persons lawfully entitled thereto.
2. Cause the building or structure to be repaired or demolished. The cost thereof shall be assessed against the property upon which the particular building or structure is located or the Repair and Demolition Fund. The repair or demolition of any building or structure, or sale of the materials thereof, shall be by a contract awarded following advertisement for bids, to the lowest and best bidder in the case of repair or demolition work and to the highest and best bidder in the case of the sale of material.

Arrangements, as prescribed by the Administrative Hearing Officer in this Section, preparing for the repair, demolition, or sale of materials, of or from any structure discussed in this Code shall be the responsibility of the Building Official. However, no such arrangements or other work to that end shall be initiated prior to specific instructions from the Administrative Hearing Officer indicating such action.

Section 15.28.140, "Violation – Penalty"

- A. No person, whether as owner, lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this chapter.
- B. Any person, firm, or corporation violating any provision of this code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.
- C. Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 7. Lodi Municipal Code Chapter 15.30, "Property Maintenance and Designation of Certain Kinds of Nuisances," Sections 15.30.040 – 15.30.220 are hereby repealed and Sections 15.30.040 – 15.30.060 are reenacted as follows:

Section 15.30.040, "Declaration of Public Nuisance"

Any property found to be maintained in violation of the foregoing section is declared to be a public nuisance and shall be subject to the administrative procedures set forth in Chapter 1.10. The procedures for abatement set forth therein shall not be exclusive, and shall not, in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner.

Section 15.30.050, "Alternative Actions Available"

Nothing in this chapter shall be deemed to prevent the city council from ordering the commencement of a civil proceeding to abate the nuisance pursuant to applicable law or restricting the city from pursuing any other remedy available under applicable law.

Section 15.30.060, "Violation – Penalty"

Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 8. Lodi Municipal Code Chapter 15.31, "Weed and Refuse Abatement," is hereby amended by adding Sections 15.31.150 – 15.31.170 and shall read as follows:

Section 15.31.150, "Declaration of Public Nuisance"

Any property found to be maintained in violation of the foregoing section is declared to be a public nuisance and shall be subject to the administrative procedures set forth in Chapter 1.10. The procedures for abatement set forth therein shall not be exclusive, and shall not, in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner.

Section 15.31.160, "Alternative Actions Available"

Nothing in this chapter shall be deemed to prevent the city council from ordering the commencement of a civil proceeding to abate the nuisance pursuant to applicable law or restricting the city from pursuing any other remedy available under applicable law.

Section 15.31.170, "Violation – Penalty"

Any person who shall violate any of the provisions of this chapter shall be subject to enforcement and penalty provisions set forth in Chapter 1.10 of this code.

Section 9 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.


Section 10. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 11. This ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect 30 days from and after its passage and approval.

Approved this 19th day of April, 2006.

Attest:


SUSAN J. BLACKSTON
City Clerk


SUSAN HITCHCOCK
Mayor

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1778 was introduced at a regular meeting of the City Council of the City of Lodi held April 5, 2006, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held April 19, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce, and
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

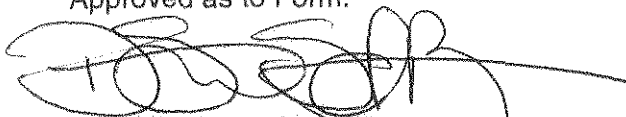
ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1778 was approved and signed by the Mayor of the date of its passage and the same has been published pursuant to law.


SUSAN J. BLACKSTON
City Clerk

Approved as to Form:


D. STEPHEN SCHWABAUER
City Attorney